Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PHILIP MORRIS PHILIPPINES MANUFACTURING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8692

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUN 3 0 2015

4:05 p.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review[1] filed by petitioner Philip Morris Philippines Manufacturing, Inc. on August 12, 2013, seeks the refund or issuance of a Tax Credit Certificate, in the amount of Twenty Nine Million Six Hundred Fifty One Thousand Nine Hundred Fifty One and 79/100 (₱29,651,951.79), allegedly representing the excess withholding tax erroneously paid on its royalty payments to Philip Morris Global Brands Inc. (PMGB), in consideration for the exclusive right to use various trademarks and other intellectual property rights of PMGB for the period of July 2011 to October 2012.

The facts, as found in the records of this case, are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address 27th Floor, Tower 1, The Enterprise Centre, 6766 Ayala Avenue corner Paseo de Roxas, Makati City.[2]

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[1] Docket (Vol. I), pp. 6-22.
[2] Exhibit "P-1".

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue with office address at BIR Building, Diliman, Quezon City.[3]

On January 1, 2011, petitioner entered into an Agreement ("TLA") with Philip Morris Global Brands (PMGB), a non-resident foreign corporation duly organized and existing under the laws of the State of Delaware United States of America[4], wherein petitioner was granted the exclusive right to use the various trademarks and other intellectual property rights of PMGB. The TLA was duly registered with and approved by the Intellectual Property Office (IPO), as shown in IPO Certificate of Compliance No. 5-2012-00116.[5]

Pursuant to the provisions of the TLA, petitioner paid royalties to PMGB from July 2011 to October 2012 in the aggregate gross amount of ₱148,259,758.96[6], broken down as follows:

Period	Royalty Payments
July 2011	₱ 7,462,436.59
August 2011	10,765,788.24
September 2011	11,665,960.38
October 2011	3,276,126.82
November 2011	11,172,051.40
December 2011	15,098,619.93
January 2012	5,375,934.85
February 2012	8,080,765.63
March 2012	17,560,068.03
April 2012	8,598,997.20
May 2012	9,431,786.08
June 2012	6,542,867.20
July 2012	7,228,437.73
August 2012	8,302,118.92
September 2012	6,857,800.83
October 2012	10,839,999.13
TOTAL	**₱ 148,259,758.96**

From August 15, 2011 to November 14, 2012, petitioner withheld and remitted to respondent income tax in the aggregate amount of ₱44,477,927.68, representing the 30% withholding tax

[3] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. II), p. 806.
[4] Exhibit "P-2".
[5] Exhibit "P-3".
[6] Exhibits "P-7" to "P-22-A".

due on royalty payments under the TLA for the period of July 2011 to October 2012.

On July 31, 2013, petitioner, as withholding agent of PMGB, filed with the Bureau of Internal Revenue (BIR) Large Taxpayers Service an administrative claim for refund or issuance of a tax credit certificate in the total amount of ₱29,651,951.79, corresponding to the alleged excess withholding tax remittances on royalty payments it made to PMGB for the period of July 2011 to October 2012.

Petitioner's claim for tax refund is based on Article 13(2)(b)(iii) of the Convention between the Government of the Republic of the Philippines and the Government of the United States of America with Respect to Taxes on Income ("PH-US Tax Treaty"), in relation to Article 12(2)(b) of the Agreement between the Government of the Republic of the Philippines and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income ("PH-China Tax Treaty") and Article 12(2) of the Agreement between the Government of the Republic of the Philippines and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital ("PH-UAE Tax Treaty"). These effectively provide a preferential rate of 10% on royalties remitted by a Philippine corporation to residents of the United States.

Due to respondent's failure to act on the administrative claim, petitioner filed the instant Petition on August 12, 2013.

Within the extended time granted by the Court[7], respondent filed her Answer[8] on September 30, 2013, interposing the following special and affirmative defenses:

SPECIAL AND AFFIRMATIVE DEFENSES

> Petitioner is not entitled to claim for refund or tax credit in the amount of Twenty Nine Million Six Hundred Fifty One Thousand Nine Hundred Fifty One Pesos and 79/100 (₱29,651,951.79) allegedly representing excess withholding tax on royalty payments to Philip Morris

[7] Order dated August 29, 2013, Docket (Vol. I), p. 215.
[8] Docket (Vol. I), pp. 217-231.

Global Brands, Inc. (PMGB). Petitioner is not the statutory taxpayer or the person liable for or subject to tax. As a withholding agent, petitioner merely withheld and remitted to the Bureau of Internal Revenue taxes paid by Philip Morris Global Brands, Inc. (PMGB). The person who has legal personality to apply for a refund is the one who made the payments and who will suffer financially by paying in good faith what it had believed to be its liability.

A claim for tax refund or tax credit presupposes that a tax was previously paid and that said previously paid tax is just being returned. Essentially, one cannot claim for refund if he has no prior tax payment. Petitioner, therefore cannot claim refund or tax credit of a tax it did not pay. It has been consistently held by the Supreme Court that:

> 'The person entitled to claim a tax refund is the statutory taxpayer. Section 22(N) of the NIRC defines a taxpayer as 'any person subject to tax.' In *Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp.,* the Court ruled that:
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> > 'A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer.' The terms 'liable for tax' and 'subject to tax' both connote a legal obligation or duty to pay a tax.'

Section 22(N) of the National Internal Revenue Code of 1997 provides the term 'taxpayer' means any person subject to tax. Petitioner, as withholding agent, is not the person liable for tax, it merely collects the tax due from income payments to entities arising from certain transactions and remits the same to the Bureau of Internal Revenue, hence not the statutory taxpayer. Consequently, petitioner has no standing to claim for refund. As held by the Supreme Court in the case of Asia International Auctioneers vs. Commissioner of Internal Revenue:

> 'xxx On the other hand, in case of withholding taxes, the incidence and burden

of taxation fall on the same entity, the statutory taxpayer. The burden of taxation is **not shifted to the withholding agent who merely collects, by withholding, the tax due from income payments to entities arising from certain transactions and remits the same to the government.**" (Emphasis supplied)

Further, in the case of Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, the Supreme Court ruled:

> Under the withholding tax system, the payor is the taxpayer upon whom the tax is imposed, while the withholding agent simply acts as an agent or a collector of the government to ensure the collection of taxes.
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> It is, therefore, indisputable that the withholding agent is merely a tax collector and not a taxpayer, as elucidated by this Court in the case of *Commissioner of Internal Revenue v. Court of Appeals*, to wit:
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> xxx xxx xxx
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> Based on the foregoing, the liability of the withholding agent is independent from that of the taxpayer. The former cannot be made liable for the tax due because it is the latter who earned the income subject to withholding tax. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government. The liability for the tax, however, remains with the taxpayer because the gain was realized and received by him.

In the case of Diageo Philippines, Inc., vs. Commissioner of Internal Revenue, the Supreme Court ruled that 'the person entitled to claim a tax refund is the statutory taxpayer or the person liable for or subject to tax. *Xxx* not being the party statutorily liable to pay taxes, petitioner is not the proper party to claim a refund or credit.' To allow petitioner to claim for refund would result to unjust enrichment.

> There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. Article 22 of the Civil Code provides that every person who through the an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage.' *(BPI Family Bank vs. Avenido G.R. No. 175816 December 7, 2011)*

Section 2, Rule 3 of the Rules of Court provides that every action must be prosecuted or defended in the name of the real party-in-interest, or in the name of one who stands to be benefited or injured by the judgment in the suit. A suit filed by one who is not a real party-in-interest must be dismissed. A real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. As explained by the Highest Court, an 'interest', within the meaning of the rule, means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. An action shall be prosecuted in the name of the party who, by the substantive law, has the right sought to be enforced. Petitioner, not being the real party-in-interest has no legal personality to maintain in this case.

Assuming that petitioner can claim for tax refund or credit, still the same will not prosper. Petitioner did not file an application for Tax Treaty Relief as required under Revenue Memorandum Order (RMO) No. 72-2010, which states:

Section 1. Objective. — This Order is issued to streamline the processing of Tax Treaty Relief Applications (TTRA) and to prescribe the documentary requirements for the processing of the applications for relief from double taxation pursuant to existing Philippine Tax treaties in order to improve efficiency and service to the taxpayers.

Section 2. Tax Treaty Relief Application. — In order to achieve the above-mentioned objective, the processing for the application for tax treaty relief is hereby revised and updated. The following Tax Treaty Relief Applications (TTRAs) forms shall henceforth be adopted to implement this RMO:

xxx xxx xxx

Section 3. General Documentary Requirements. — the following documents are the general documentary requirements which shall be attached to all duly accomplished TTRAs (3 copies) which must be signed by the applicant who may either be the income earner or the duly authorized representative of the income earner, pursuant to existing Philippine tax treaties, *viz.*:

xxx xxx xxx

Section 9. Royalties. — The following documents shall be submitted in addition to the documents required under Section 3 hereof together with three (3) copies of duly accomplished BIR Form No. 0901-R when the *'Royalties'* Article of the appropriate tax treaty is being invoked, *viz*:

1. Original or certified copy of the duly notarized Royalty Agreement, Technology Transfer Agreement, or Licensing Agreement.

2. When applicable,

a. Certified copy of Board of Investments registration of the payor of the royalties, including a Sworn Statement that such registration has not been cancelled at the time of the transaction.

b. A certified copy of the registration of the payor of the income or withholding agent with the Philippine Economic Zone Authority (PEZA) of the payor of the royalties including a Sworn Statement that such registration has not been cancelled at the time of the transaction.

c. Certified copy of Intellectual Property Office (IPO) registration.

xxx xxx xxx

Section 14. When and Where to File the TTRA. — All tax treaty relief applications (updated BIR Forms No. 0901-D, 0901-I, 0901-R, 0901-P, 0901-S, 0901-T, 0901-O and 0901-C) relative to the implementation and interpretation of the provisions of Philippine tax treaties shall only be submitted to and received by the International Tax Affairs Division (ITAD). If the forms or any necessary documents are submitted to any other BIR Office, the application shall be considered as improperly filed.

Filing should always be made BEFORE the transaction. *Transaction* for purposes of filing the TTRA shall mean before the occurrence of the first taxable event.

Failure to file the TTRA with ITAD within the period prescribed herein shall have the

> effect of disqualifying the TTRA under this RMO.
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> xxx xxx xxx

Based on the foregoing, petitioner is required to file an application for the implementation and interpretation of the provisions of Philippine tax treaty in order to apply the preferential tax treaty rates. Any availment of tax treaty relief must be preceded by an application by filing BIR Form No. 1901 (Application for Relief from Double Taxation) with International Tax Affairs Division (ITAD) before the transaction or before the occurrence of the first taxable event. The said RMO, likewise, prescribes documentary requirements which shall be attached to the application for preferential rates.

The law provides that the power to interpret provisions of the Tax Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner of Internal Revenue. 'The interpretation given by the administrative officer charged by reason of his office to carry out the provisions of the statute should be respected whenever such interpretation is assailed by someone who alleges no reasons of weight to contradict or weaken it.' Thus, the issuance by the Commissioner of Internal Revenue of the said RMO is anchored on her interpretation that all the requirements set forth in RMO 72-2010 must be complied with before one can avail of the preferential rate under the tax treaty.

In the case of Commissioner of Internal Revenue vs Court of Appeals, R.O.H. Auto Products Philippines, Inc and Court of Tax Appeals, the Supreme Court ruled:

> The authority of the Minister of Finance (now the Secretary of Finance), in conjunction with the Commissioner of Internal Revenue, to promulgate all needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Neither can it be disputed that such rules and regulations, as well as administrative opinions and rulings, ordinarily should deserve weight and respect by the courts. Much more fundamental than either of the above,

> however, is that all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law.

Petitioner insists in applying the 10% preferential rate under the PH-US Tax Treaty, in relation to the PH-China and PH-United Arab Emirates Tax Treaty by invoking the principle of *pacta sunt servanda*. However, petitioner did not file an application for tax treaty relief in accordance with RMO No. 72-2010. Hence petitioner should not apply the 10% preferential rate under the said treaty.

Petitioner's contention that PH-US Tax Treaty is part of the law of the land, and as such, that tax treaty assumes greater weight, has no basis. It is settled rule that in case of conflict between municipal law and international law, municipal law must prevail and should be upheld by our courts. In cases decided by the Supreme Court, it held, '**In a situation however, where the conflict is irreconcilable and a choice has to be made between a rule of international law and municipal law, jurisprudence dictates that municipal law should be upheld by the municipal courts** (Inchong vs. Hernandez, 101 Phil. 1155 [1957]; Gonzales vs. Hechanova, 9 SCRA 230 [1963]; In re: Garcia, 2 SCRA 984 [1961]) **for the reason that such courts are organs of municipal law and are accordingly bound by it in all circumstances. The fact the international law has been made part of the law of the land does not pertain to or imply the primacy of international law over national or municipal law in the municipal sphere.** The doctrine of incorporation, as applied in most counties, decrees that rules of international law are given equal standing with, **but are not superior to, national legislative enactments**.

Assuming that petitioner can apply the preferential rate of 10% despite its failure to file an application for tax treaty relief, again, its claim must fail. Petitioner did not submit complete documents required under Revenue Memorandum Order No. 53-98 dated June 1, 1998. The said Memorandum Order requires that complete documents must be submitted relevant to substantiate a claim for refund with the Bureau of Internal Revenue. To support its claim, it is imperative for petitioner to prove its claim for refund otherwise, petitioner's claim must fail.

> 'In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.' (Western Mindanao Power Corporation vs Commissioner of Internal Revenue, G.R. No. 181136, June 13, 2012)

Petitioner filed an administrative claim for refund on July 31, 2013. On August 12, 2013, or merely twelve (12) days after filing an administrative claim, petitioner filed a Petition for Review before the Court of Tax Appeals. A claim for refund is subject to routinary investigation/examination by the BIR. Administrative authority must be given opportunity to decide the matter, to act and correct the errors in the administrative forum.

It has been held by the Supreme Court that a claim for refund is not *ipso facto* granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim.

Clearly, the Commissioner of Internal Revenue was deprived of the opportunity to examine, evaluate and act on petitioner's application for tax refund. Petitioner violated the doctrine of exhaustion of administrative remedies. The doctrine calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. It is settled that non-observance of the doctrine results in lack of cause of action which is one of the grounds allowed by the Rules of Court for the dismissal of the complaint.

> Observance of the mandate regarding exhaustion of administrative remedies is a sound practice and policy. It ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency by withholding judicial action until the administrative process had run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for this principle. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts for reason of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act.

In the case of Microsoft Philippines vs. Commissioner of Internal Revenue, the Supreme Court held that 'the taxpayer claiming tax credit or refund has the burden of proving that he is entitled to the refund or credit, by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.'

It is a settled rule that all administrative remedies must be availed of before a party is allowed to seek judicial intervention. The Supreme Court 'consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.'

The general rule is that before a party may seek the intervention of the court, it should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation. Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.

For failure to exhaust administrative remedies and to adduce evidence in the administrative claim justifies the denial by inaction by the Commissioner. Therefore the judicial claim should likewise be denied.

In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.

Finally, tax refunds in relation to the VAT are in the nature of tax exemptions. The general rule is that

> claimants of tax refunds bear the burden of proving the factual basis of their claims. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.
>
> In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Hence, a taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to overcome such burden."

A Notice of Pre-Trial Conference was issued on October 2, 2013 setting the Pre-Trial Conference on November 7, 2013.[9]

On October 14, 2013, petitioner filed a Reply (to Respondent's Answer dated September 30, 2013)[10] averring the following comments and objections to respondent's special and affirmative defenses:

1. The withholding agent of a non-resident foreign corporation has legal standing to file a claim for refund of the amount withheld from payment due to the non-resident foreign corporation.

2. Failure to file a tax treaty relief application should not preclude a qualified entity to enjoying the benefits granted under a tax treaty.

3. RMO 53-98 refers to documents required to be submitted during the course of a tax audit investigation, not in relation to an administrative claim for refund.

4. Petitioner complied with the jurisdictional requirements when it filed the administrative and judicial claims for a

[9] Docket (Vol. I), p. 232.
[10] Docket (Vol. I), pp. 233-246.

refund within the period prescribed under the Tax Code.

Subsequently, respondent's Pre-Trial Brief[11] was filed on October 21, 2013, while petitioner's Pre-Trial Brief[12] was filed on November 4, 2013.

Thereafter, the parties filed their Joint Stipulation of Facts and Issues[13] on November 27, 2013, which was approved and adopted by the Court in the Pre-Trial Order[14] issued on December 11, 2013, which also terminated the pre-trial.

During trial, petitioner presented as its witnesses, Mr. Alfredo S. Ramos, the Head of the Verification and Allotment Unit of the Bureau of Internal Revenue, Revenue Accounting Division and Ms. Catherine De Asa, its Senior Tax Manager.

After the completion of the presentation and formal offer of evidence for the petitioner, the Court admitted as evidence for petitioner Exhibits "P-52", "P-52-A", "P-1" to "P-6", "P-23" to "P-28", "P-30" to "P-51-B" and "P-53" to "P-57" in a Resolution dated May 16, 2014.[15] However the Court denied the admission of Exhibits "P-7" to "P-22-A" for failure of petitioner to have said documents identified.

Petitioner filed a Motion for Partial Reconsideration of the Resolution Dated 16 May 2014 on May 30, 2014.[16] Thereafter, petitioner's Exhibits "P-7" to "P-22-A" were admitted by the Court in the Resolution dated June 2, 2014.

When it was respondent's turn to present her evidence, counsel for respondent manifested that she will no longer present evidence and that she is submitting the instant case for decision.[17]

Petitioner's Memorandum[18] and respondent's Memorandum[19] were both submitted on July 2, 2014. Accordingly, the case was submitted for decision on July 7, 2014.[20]

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[11] Docket (Vol. I), pp. 247-251.
[12] Docket (Vol. I), pp. 263-272.
[13] Docket (Vol. II), pp. 806-813.
[14] Docket (Vol. II), pp. 816-821.
[15] Docket (Vol. III), pp. 1464-1465.
[16] Docket (Vol. III), pp. 1466-1473.
[17] Minutes of the Hearing dated June 2, 2014, Docket (Vol. III), p. 1495.
[18] Docket (Vol. III), pp. 1501-1532

The parties stipulated[21] the following issues for the Court's resolution:

1. Whether Petitioner's royalty payments to PMGB under the TLA from July 2011 to October 2012 are entitled to the application of the preferential tax rate of 10% under Article 13(2)(b)(iii) of the PH-US Tax Treaty, in relation to Article 12(2)(b) of the PH-China Tax Treaty and Article 12(2) of the PH-UAE Tax Treaty.

2. Whether Petitioner is entitled to a refund or issuance of a tax credit certificate for the total amount of **₱29,651,951.79**, corresponding to the excess withholding tax remittances on royalty payments it made to PMGB for the period of July 2011 to October 2012.

To recall, petitioner entered into an Agreement ("TLA")[22] with Philip Morris Global Brands (PMGB), a non-resident foreign corporation duly organized and existing under the laws of the State of Delaware United States of America[23]. In the said TLA, petitioner was granted the exclusive right to use the various trademarks and other intellectual property rights of PMGB.

Petitioner argues that its royalty payments to PMGB under the TLA from July 2011 to October 2012 are entitled to the application of the preferential tax rate of 10% under Article 13(2)(b)(iii) of the PH-US Tax Treaty, in relation to Article 12(2)(b) of the PH-China Tax Treaty and Article 12(2) of the PH-UAE Tax Treaty.

Article 13(2)(b)(iii) of the PH-US Tax Treaty reads as follows:

PH-US TAX TREATY

"**Article 13**
Royalties

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[19] Docket (Vol. III), pp. 1533-1547.
[20] Docket (Vol. III), p. 1548.
[21] Stipulation of Issues, JSFI, Docket (Vol. II), pp. 806-807.
[22] See footnote no. 4.
[23] Exhibits "P-4", "P-4-A", "P-5" and "P-6".

(1) Royalties derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.

(2) However, the tax imposed by that other Contracting State shall not exceed-

(a) In the case of the United States, 15 percent of the gross amount of the royalties, and

(b) In the case of the Philippines, the least of:

(i) 25 percent of the gross amount of the royalties;

(ii) 15 percent of the gross amount of the royalties, where the royalties are paid by a corporation registered with the Philippine Board of Investments and engaged in preferred areas of activities; and

(iii) **the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid under similar circumstances to a resident of a third State**.

(3) The Term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial or scientific experience. The term 'royalties' also includes gains derived from the sale, exchange or other disposition of any such right or property which are contingent on the productivity, use, or disposition thereof."

The foregoing article provides for the "most favored nation" clause for tax treatment of royalties income derived by a resident of the United States of America from sources within the Philippines.

In the case of *Commissioner of Internal Revenue vs. S.C. Johnson and Son., Inc. and Court of Appeals*[24], the Supreme Court held that the purpose of the "most-favored-nation" clause is to grant to the contracting state a tax treatment that is no less favorable than that which has been or may be granted to the "most favored" among other countries.

The tax treatment of royalty payments to a US entity, therefore, must be taken in relation to other tax treaties that provide for a lower rate of tax on the same type of income. Thus, in this regard, petitioner cites Article 12(2)(b) of the PH-China Tax Treaty and Article 12(2) of the PH-UAE Tax Treaty, the pertinent articles of which reads as follows:

PH-CHINA TAX TREATY

"Article 12
Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of the State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

    a) 15 per cent of the gross amount of royalties arising from the use of, the right to use, any copyright of literary, artistic or scientific work including cinematograph films or tapes for television or broadcasting, or

    b) **10 percent of the gross amount of royalties arising from the use of, or the right to use, any patent, trade**

[24] G.R. No. 127105, June 25, 1999.

> **mark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.**

For as long as the transfer of technology, under Philippine Law, is subject to approval, the limitation of the tax rate mentioned under (b) shall, in the case of royalties arising in the Republic of the Philippines, only apply if the contract giving rise to such royalties has been approved by the Philippine competent authorities.

3. The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematography films, or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience."

<u>PH-UAE TAX TREATY</u>

"ARTICLE 12
Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, **the royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the royalties**. The competent authorities of the Contracting State shall, by mutual agreement, settle the mode of applications of this limitation." *(Emphasis Ours)*

Article 12(2)(b) of the PH-China Tax Treaty provides that royalties paid to a resident of China from sources within the Philippines for the use of, or the right to use, trademarks or other intellectual properties shall be subject to 10% preferential tax rate – if the contract giving rise to such royalties has been approved by the competent Philippine authorities.

Revenue Memorandum Circular ("RMC") 46-02 dated September 2, 2002, established the applicability of the preferential tax rate of 10% under Article 12(2)(b) of the PH-China Tax Treaty to royalty payments or income made to residents of the United States of America that are covered by Article 13(2)(b)(iii) of the PH-US Tax Treaty, to wit:

> **"REVENUE MEMORANDUM CIRCULAR NO. 46-02**
>
> SUBJECT: Clarifying the Implication of Article 12(2)(b) on Royalties of the RP-China Tax Treaty, in Relation to Article 13 (2) (b) (iii), Otherwise Known as the 'Most-Favored-Nation' Clause of the RP-US Tax Treaty
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> xxx xxx xxx
>
> Article 23 of the RP-US tax treaty and Article 23 of the RP-China tax treaty, though differently worded, plainly reveal a similarity in the provisions on relief from or avoidance of double taxation to their respective residents. Thus, the tax on royalty payments to residents of US and China are paid under similar circumstances, i.e., the amount of royalty income tax paid or accrued to the Philippines under the respective tax treaties is available as tax credit against the income tax payable in their respective countries. **US residents may, therefore, invoke the preferential tax rate of 10% on royalties, accruing beginning January 1, 2002, arising in the Philippines 'from the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, . . ., or for information concerning industrial, commercial or scientific experience' under the RP-China tax treaty, pursuant to the 'most-favored-nation' clause of the RP-US tax treaty.**

It bears stressing, **however, that there are two important requirements that should be complied with before the 10% rate of withholding tax on royalties remitted to a resident of US and China may be availed of**, to wit:

1. It is necessary that **there be an agreement or a contract whereby the royalties paid to the US must originate from the use of, or the right to use any** patent, **trade mark**, design or model, plan, secret formula or process, or from the use, or the right to use, industrial, commercial or scientific experience; and

2. For as long as **the contract or agreement is subject to approval under Philippine law, the same must be duly approved by the Philippine competent authorities**." *(Emphasis ours)*

Furthermore, the Court *en banc* affirmed, in the case of *Commissioner of Internal Revenue vs. Wrigley Philippines, Inc.*[25], that royalty payments made by a Philippine domestic corporation to a non-resident foreign corporation duly organized and existing under the laws of the United States of America are "subject to the final withholding tax at the rate of 10% pursuant to the "most favored nation" provision of the RP-US Tax Treaty, in relation to the RP-China Tax Treaty.

Pursuant to RMC 46-02, petitioner must comply with the following conditions before the reduced withholding tax rate of ten percent (10%) on royalties may be availed of:

1. It is necessary that there be an agreement or a contract whereby the royalties paid to the US must originate from the use of, or the right to use any patent, trade mark, design or model, plan, secret formula or process, or from the use, or the right to use, industrial, commercial or scientific experience; and

[25] CTA EB Case No. 334 (CTA Case No. 7138), April 30, 2008.

2. For as long as the contract or agreement is subject to approval under Philippine law, the same must be duly approved by the Philippine competent authorities.

To prove compliance with the foregoing requisites, petitioner presented the following documentary evidence, to wit:

1. Agreement between PMPMI and PMGB dated 1 January 2011[26]; and

2. Certificate of Compliance No. 5-2012-00116 issued by the Intellectual Property Office[27];

Thus, petitioner's royalty payments to PMGB for the right to use various PMGB trademarks and other intellectual property rights are clearly subject to the preferential tax rate of 10% under Article 13(2)(b)(iii) of the PH-US Tax Treaty, in relation to Article 12(2)(b) of the PH-China Tax Treaty.

Respondent argues that petitioner cannot claim for tax refund or credit of the excess withholding tax erroneously paid on its royalty payments since it failed to file an application for Tax Treaty Relief with the International Tax Affairs Division (ITAD) before the transaction or before the occurrence of the first taxable event as required under Revenue Memorandum Order (RMO) No. 72-2010[28].

However, in the case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue* [29], the Supreme Court held that non-compliance with the prior application rule as required by RMO No. 1-2000[30] should not operate to automatically divest entitlement to the tax treaty relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty and would impair the value of the tax treaty, to wit:

> "Likewise, it must be stressed that **there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for**

[26] Exhibit "P-2".
[27] Exhibit "P-3".
[28] Guidelines on the Processing of Tax Treaty Relief Applications (TTRA) Pursuant to Existing Philippine Tax Treaties, dated August 25, 2010.
[29] G.R. No. 188550, August 19, 2013.
[30] Guidelines on the Processing of Tax Treaty Relief Applications (TTRA) Pursuant to Existing Philippine Tax Treaties.

> **failure to comply with the 15-day period.** We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but **the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.**
>
> Bearing in mind the rationale of tax treaties, **the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty**. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.
>
> **The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000.** Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief." *(Emphasis ours)*

In the same case, the Supreme Court also held that prior application with the BIR becomes moot in refund cases and explained the rationale a s follows:

> **"The underlying principle of prior application with the BIR becomes moot in refund cases, such as the present case, where the very basis of the claim is erroneous or there is excessive payment arising from non-availment of a tax treaty relief at**

> **the first instance.** In this case, petitioner should not be faulted for not complying with RMO No. 1-2000 prior to the transaction. It could not have applied for a tax treaty relief within the period prescribed, or 15 days prior to the payment of its BPRT, precisely because it erroneously paid the BPRT not on the basis of the preferential tax rate under the RP-Germany Tax Treaty, but on the regular rate as prescribed by the NIRC. Hence, the prior application requirement becomes illogical. Therefore, the fact that petitioner invoked the provisions of the RP-Germany Tax Treaty when it requested for a confirmation from the ITAD before filing an administrative claim for a refund should be deemed substantial compliance with RMO No. 1-2000."

Thus, the fact that petitioner failed to file an application for tax treaty relief does not preclude it from enjoying the benefits of the preferential tax rate of 10% under Article 13(2)(b)(iii) of the PH-US Tax Treaty, in relation to Article 12(2)(b) of the PH-China Tax Treaty.

Having disposed of the issue on the prior application rule, this Court will now proceed to determine if petitioner is entitled to a refund or issuance of a tax credit certificate for the total amount of ₱29,651,951.79, corresponding to the excess withholding tax remittances on royalty payments it made to PMGB for the period of July 2011 to October 2012.

Pertinent to resolving the instant case are Sections 204 and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:

> "SEC. 204. **Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or

penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

"SEC. 229. **Recovery of Taxes Erroneously or Illegally Collected**. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

From the foregoing, in order to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be present:[31]

1) That there must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2) That the claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

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[31] Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, CTA Case No. 7731, September 7, 2012.

3) That the suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

The Court finds it prudent to first determine the timeliness of petitioner's claim for refund.

Records show that petitioner remitted its payment for the withholding tax on royalties due to PMGB for the period covering July 2011 to October 2012, as follows:

Period	**Date of Filing/Payment**
July 2011	August 15, 2011
August 2011	September 14, 2011
September 2011	October 14, 2011
October 2011	November 14, 2011
November 2011	December 14, 2011
December 2011	January 16, 2012
January 2012	February 14, 2012
February 2012	March 14, 2012
March 2012	April 13, 2012
April 2012	May 14, 2012
May 2012	June 14, 2012
June 2012	July 16, 2012
July 2012	August 15, 2012
August 2012	September 14, 2012
September 2012	October 15, 2012
October 2012	November 15, 2012

Since the earliest remittance is on August 15, 2011, petitioner therefore had until August 15, 2013 within which to file both its administrative and judicial claims for refund. Petitioner filed its administrative claim for refund on July 31, 2013[32] and, the instant Petition for Review was filed on August 12, 2013[33]. Petitioner therefore, has complied with the mandatory two-year prescriptive period.

[32] Exhibit "P-51" to "P-51-B.
[33] Docket (Vol. I), pp. 6-18.

Anent, respondent's contention that petitioner failed to exhaust administrative remedies since it filed the instant Petition merely 12 days after filing its administrative claim, the same is untenable.

The taxpayer is given two years from his erroneous payment of tax within which to file his written claim for refund. However, if the Commissioner takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Commissioner.[34]

As regards petitioner's compliance with the first requisite the Court will now establish whether petitioner actually withheld and remitted the aggregate amount of ₱ 44,477,927.68, representing the 30% withholding tax on its royalty payments to PMGB under the TLA for the period of July 2011 to October 2012.

Petitioner paid royalties to PMGB from July 2011 to October 2012 in the aggregate amount of ₱ 148,259,758.96. This is evidenced by PMGB invoices[35] as well as bank certifications showing payment remittances from petitioner to PMGB[36], petitioner's 2011 and 2012 Annual Income Tax Returns and Audited Financial Statements[37] and petitioner's monthly breakdown of royalty payments to PMGB for the year 2011 and 2012 (based on the figures reported in the alpha-lists attached to the Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601F))[38].

As proof of the amount of final withholding taxes it withheld and remitted to respondent, petitioner presented the following eFPS Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601F) for the period of July 2011 to October 2012[39]. It also presented BIR system-generated eFPS Payment Details[40] confirming the successful payment of the same.

[34] Gibbs, et al., vs. Collector of Internal Revenue and Court of Tax Appeals, G.R. No. L-13453, February 29, 1960.
[35] Exhibits "P-7" to "P-22-A".
[36] Exhibits "P-23" to "P-28".
[37] Exhibits "P-47" to "P-48-1".
[38] Exhibits "P-49" and "P-50"; Exhibits "P-30-1" to "P-45-1".
[39] Exhibits "P-30", "P-30-A", "P-31", "P-31-A", "P-32", "P-32-A", "P-33", "P-33-A", "P-34", "P-34-A", "P-35", "P-35-A", "P-36", "P-36-A", "P-37", "P-37-A", "P-38", "P-38-A", "P-39", "P-39-A", "P-40", "P-40-A", "P-41", "P-41-A", "P-42", "P-42-A", "P-42-3", "P-42-3-A", "P-43", "P-43-A", "P-44", "P-44-A", "P-45" and "P-45-A".
[40] Exhibits "P-30-2", "P-30-2-A", "P-31-2", "P-31-2-A", "P-32-2", "P-32-2-A", "P-33-2", "P-33-2-A", "P-34-2", "P-34-2-A", "P-35-2", "P-35-2-A", "P-36-2", "P-36-2-A", "P-37-2", "P-37-2-A", "P-38-2", "P-38-2-A", "P-39-2", "P-39-2-A", "P-40-2", "P-40-2-A", "P-41-2", "P-41-2-A", "P-42-2", "P-42-2-A", "P-42-4", "P-42-4-A", "P-43-2", "P-43-2-A", "P-44-2", "P-44-2-A", "P-45-2" and "P-45-2-A".

Petitioner attached to the eFPS tax returns, the alpha-list of the final withholding tax withheld[41] showing the amounts specifically withheld[42] and remitted in connection with royalty payments to PMGB for the period of July 2011 to October 2012 to wit:

Alpha-list attached to the Monthly Remittance Return of Final Income Tax Withheld (BIR Form 1601) for the Period	Exhibit	Amount Withheld (30%) in connection with royalty payments to PMGB	Exhibit (sub-marking)
July 2011	P-30-1	2,238,730.98	P-30-1-A
August 2011	P-31-1	3,229,736.46	P-31-1-A
September 2011	P-32-1	3,499,788.11	P-32-1-A
October 2011	P-33-1	982,838.05	P-33-1-A
November 2011	P-34-1	3,351,615.42	P-34-1-A
December 2011	P-35-1	4,529,585.98	P-35-1-A
January 2012	P-36-1	1,612,780.45	P-36-1-A
February 2012	P-37-1-1	2,424,229.69	P-37-1-1-A
March 2012	P-38-1	5,268,020.41	P-38-1-A
April 2012	P-39-1	2,579,699.16	P-39-1-A
May 2012	P-40-1	2,829,535.82	P-40-1-A
June 2012	P-41-1	1,962,860.16	P-41-1-A
July 2012	P-42-1	2,168,531.32	P-42-1-A
August 2012	P-43-1	2,490,635.68	P-43-1-A
September 2012	P-44-1	2,057,340.25	P-44-1-A
October 2012	P-45-1	3,251,999.74	P-45-1-A
	TOTAL	**₱ 44,477,927.68**	

From the foregoing, petitioner clearly established that it actually erroneously withheld and remitted the aggregate amount of ₱44,477,927.68, representing the 30% withholding tax on its royalty payments to PMGB under the TLA for the period July 2011 to October 2012.

As it was established earlier, the preferential rate of 10% on royalties remitted by a Philippine corporation to residents of the

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[41] Exhibits "P-30-1", "P-31-1", "P-32-1", "P-33-1", "P-34-1", "P-35-1", "P-36-1", "P-37-1-1", "P-38-1", "P-39-1", "P-40-1", "P-41-1", "P-42-1", "P-43-1", "P-44-1" and "P-45-1".

[42] Exhibits "P-30-1-A", "P-31-1-A", "P-32-1-A", "P-33-1-A", "P-34-1-A", "P-35-1-A", "P-36-1-A", "P-37-1-1-A", "P-38-1-A", "P-39-1-A", "P-40-1-A", "P-41-1-A", "P-42-1-A", "P-43-1-A", "P-44-1-A" and "P-45-1-A".

United States apply in the instant case. Consequently, since the royalty payments were subjected to 30% final withholding tax instead of the 10% preferential tax rate, then it is proper to grant petitioner a refund in the total amount of ₱29,651,951.79, corresponding to the excess withholding tax remittances on royalty payments it made to PMGB for the period of July 2011 to October 2012, broken down as follows:

Period	Amount Withheld (30%) in connection with royalty payments to PMGB	Correct Amount of Withholding Tax Based on Preferential Rate (10%)	Excess Withholding Tax Paid
July 2011	₱ 2,238,730.98	746,243.66	1,492,487.32
August 2011	3,229,736.46	1,076,578.82	2,153,157.65
September 2011	3,499,788.11	1,166,596.04	2,333,192.08
October 2011	982,838.05	327,612.68	655,225.36
November 2011	3,351,615.42	1,117,205.14	2,234,410.28
December 2011	4,529,585.98	1,509,861.99	3,019,723.99
January 2012	1,612,780.45	537,593.49	1,075,186.97
February 2012	2,424,229.69	808,076.56	1,616,153.13
March 2012	5,268,020.41	1,756,006.80	3,512,013.61
April 2012	2,579,699.16	859,899.72	1,719,799.44
May 2012	2,829,535.82	943,178.61	1,886,357.22
June 2012	1,962,860.16	654,286.72	1,308,573.44
July 2012	2,168,531.32	722,843.77	1,445,687.55
August 2012	2,490,635.68	830,211.89	1,660,423.78
September 2012	2,057,340.25	685,780.08	1,371,560.17
October 2012	3,251,999.74	1,083,999.91	2,167,999.83
	₱ 44,477,927.68	**₱ 14,825,975.90**	**₱ 29,651,951.79**

Anent, respondent's argument that petitioner is not entitled to refund the excess withholding tax on royalty payments to PMGB as it is merely a withholding agent and not the statutory taxpayer, the same is untenable.

In the case of *Commissioner of Internal Revenue vs. Smart Communication, Inc.*[43], the Supreme Court held that a withholding agent has the right to recover the taxes erroneously or illegally collected. A withholding agent has a legal right to file a claim for refund for two reasons. *First*, he is considered a taxpayer under the NIRC as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the

[43] G.R. No. 179045-46, August 25, 2010.

amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. *Second*, as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.

Petitioner, therefore, has the right to claim for refund the amount of ₱29,651,951.79 representing the excess withholding tax it erroneously paid on its royalty payments to PMGB for the period of July 2011 to October 2012.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **Twenty Nine Million Six Hundred Fifty One Thousand Nine Hundred Fifty One and 79/100 (₱29,651,951.79)** to petitioner Philip Morris Manufacturing, Inc., representing the excess withholding tax it erroneously paid on its royalty payments to Philip Morris Global Brands Inc. in consideration of the exclusive right to use various trademarks and other intellectual property rights of PMGB for the period of July 2011 to October 2012.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice